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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Policy and Rules Concerning the)
Interstate, Interexchange Marketplace)

CC Docket No. 96-61

Implementation of Section 254(g) of the)
Communications Act of 1934, as amended)

COMMENTS

The Competitive Telecommunications Association ("CompTel"),¹ by its attorneys, and pursuant to 47 C.F.R. § 1.4(b), hereby comments on petitions for reconsideration² of the Commission's Second Report and Order in the above-captioned proceeding.³ CompTel supports

¹ CompTel is a nationwide industry association of the nation's competitive telecommunications carriers, with over 200 members including large nationwide carriers and scores of smaller regional carriers.

² See Petition for Reconsideration of Frontier Corporation (Frontier Petition); Second Report and Order Petition for Reconsideration or Clarification of General Communications, Inc. (GCI Petition); Petition for Reconsideration/Clarification of the Telecommunications Resellers Association (TRA Petition); AT&T Corp. Petition for Limited Reconsideration and Clarification (AT&T Petition); Petition for Reconsideration of the American Petroleum Institute, (American Petroleum Petition); Petition for Reconsideration of Telco Communications Group, Inc., (Telco Petition); Telecommunications Management Information Systems Coalition Petition for Clarification (Coalition Petition); Western Union Communications, Inc. Petition for Reconsideration filed (Western Union Petition); and Rural Telephone Coalition Petition for Partial Reconsideration (RTC Petition).

³ Policy and Rules Concerning the Interstate Interexchange Marketplace, CC Docket 96-61, FCC 96-424, Second Report and Order, (Oct. 31, 1996), 61 Fed. Reg. 59340 (Nov. 22, 1996) (Second Report).

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the petitioners who request reconsideration of the Commission's mandatory detariffing requirements.⁴ CompTel shows herein that the Commission should institute its forbearance policy on a permissive -- rather than a mandatory -- basis. As a bare minimum, the Commission should adopt AT&T's proposals to make detariffing permissive for casual calling rates, for the first 45 days of service, and for mixed offerings with domestic and international components.

I. INTRODUCTION

In the Second Report, the Commission prohibited non-dominant interexchange carriers ("carriers") from filing tariffs governing the terms and conditions under which they provide domestic interstate services effective September 23, 1997.⁵ In addition, the Commission prohibited nondominant carriers from filing revisions to existing tariffs, or tariffing new long-term specialized arrangements after December 23, 1996.⁶ Finally, the Commission deferred to another proceeding the question of whether non-dominant carriers must -- or, indeed, may -- file tariffs governing their international services.⁷ On December 23, 1996, eleven parties filed petitions to reconsider various aspects of the Second Report. CompTel files these comments in support of Petitions requesting reconsideration of the Commission's mandatory detariffing requirements.

⁴ See Telco Petition, Frontier Petition, TRA Petition, AT&T Petition, Western Union Petition, and GCI Petition (requesting reconsideration of finding that AT&T/Alascom is not required to file common carrier service tariff) (collectively "the Petitioners").

⁵ Second Report at ¶89.

⁶ Id. at ¶ 90.

⁷ Id. at ¶ 98.

II. DISCUSSION

A. The Commission Exceeded Its Authority In Adopting The Mandatory Detariffing Policy

As CompTel argued in its comments, the Commission lacks statutory authority to adopt the mandatory detariffing policy.⁸ Section 401 of the Telecommunications Act of 1996 directs the Commission “to forbear from applying any regulation or any provision of this Act” upon a determination that: 1) enforcement is not necessary to ensure just and reasonable rates and practices; 2) enforcement is not necessary to protect consumers; and 3) such forbearance is in the public interest. The Commission’s mandatory detariffing policy fails to meet that standard. 47 U.S.C. § 160.

Unlike permissive detariffing, mandatory detariffing does not simply relieve a carrier of the requirement to file tariffs under Section 203 and comply with the Commission’s tariffing regulations. Rather, mandatory detariffing imposes upon carriers new, affirmative obligations to cancel their tariffs and to convert to a carrier-customer individual contract system. The Commission has acknowledged that such an obligation will impose increased administrative burdens upon carriers.⁹ Mandatory detariffing therefore will effect the perverse result of increasing the administrative and cost burden on carriers -- a result that Congress clearly did not intend when it established the forbearance provisions of the Act.¹⁰

⁸ CompTel Comments at 19-22.

⁹ See Second Report at ¶ 138.

¹⁰ See CompTel Comments at 21.

Moreover, the Commission's action in the Second Report is contrary to the express language of the Act.¹¹ The Act states that the Commission "shall forbear from applying any regulation or any provision of this Act" when the statutory standards are satisfied. By its terms, that provision authorizes the Commission to remove existing requirements, not to impose new ones. Yet the Commission's mandatory detariffing rules constitute new requirements that impose upon carriers obligations to which they were not previously subject. Carriers are now obligated to terminate their existing tariffs and to replace them with individually negotiated contracts. Permissive detariffing embodies the maximum extent of the Commission's statutory forbearance authority, and the Commission exceeded its statutory authority by adopting a mandatory detariffing regime.

B. The Petitioners Demonstrate That The Commission's Mandatory Detariffing Rules Unreasonably Expose Carriers To Liability.

The petitioners correctly point out that the Commission's imposition of mandatory detariffing will unnecessarily expose carriers to significant liabilities that they did not previously face. The Commission's suggestion that implied contract theory will bind casual calling and pre-paid calling card customers to the carriers' rates, terms and conditions ignores the enormous costs of effectuating that theory. While carriers may be able to apply an implied contract theory to obtain payment for services provided to end users, it could take repetitive litigation to prove the point and the outcome of that litigation on a state-by-state basis cannot be predicted in

¹¹ See Id. at 21-22.

advance with certainty. Further, these litigation costs would not only be incurred by carriers, they would at least in part be passed on to consumers in the form of higher calling rates.¹²

Without the clear definitions of parties' obligations contained in tariffs, there will no longer be the legal certainty that previously minimized litigation between carriers and casual callers.

C. The Petitioners Demonstrate That The Commission's Mandatory Detariffing Rules Unreasonably Impose Excessive Transaction Costs Upon The Industry.

The Commission should recognize the excessive transaction costs imposed upon the industry by its mandatory detariffing scheme. The provision of services (especially uniformly provided services) pursuant to individual contracts, instead of tariffs, will greatly increase the transaction costs associated with providing those services and impose upward pressure upon end-user calling rates. Further, tariffs provide an important educational function for a carrier's sales force. Without the uniform, standardized service descriptions and terms and conditions contained in a company's tariff, a company's marketing personnel would require significantly more resources, training and supervision to ensure consistency among service orders and customers.¹³

In the Second Report, the Commission tries to minimize the burden being imposed upon carriers by suggesting that they "issue short, standard contracts that contain their basic rates,

¹² See Frontier Petition at note 23.

¹³ See CompTel Comments at 10.

terms and conditions for service.”¹⁴ However, as several petitioners noted, this approach is both impractical and legally unworkable for numerous services (e.g., consumer messaging services).¹⁵ The sheer number of individually-negotiated contracts necessary to respond to the Commission’s mandatory detariffing policy will create a morass of paperwork which will be expensive and difficult to administer. This will greatly increase the cost of initiating interexchange service to end users, and impose delays in meeting customers’ needs for service.¹⁶

The petitioners also show that voluntary tariffing will not unduly strain Commission resources. As a means of alleviating the administrative burden involved with maintaining tariffs, TRA advocates using a carrier-administered electronic tariff filing system which provides for ready filing and the immediate effectiveness of tariff revisions.¹⁷ Another possibility is to institute privatization of the tariff maintenance function.¹⁸ In particular, the Commission could grant responsibility for maintaining tariffs to its copy contractor or some other organization.

¹⁴ Second Report at ¶ 57, 138.

¹⁵ E.g., Western Union Petition at 2.

¹⁶ Some petitioners seek relief other than reversal of the Commission’s mandatory detariffing policy. They raise concerns that the Commission’s information availability requirement must be clarified or reconsidered to make sufficiently detailed pricing information available to the public in a timely manner. See Coalition Petition at 4, RTC Petition at 2-4. CompTel submits that granting petitions requesting permissive detariffing will meet these parties’ concerns as well.

¹⁷ See TRA Petition at 14-16.

¹⁸ See CompTel Comments at 14.

Lastly, mandatory detariffing deprives the public of an essential source of information that would maximize customer choice and promote price competition.¹⁹ Tariffs provide a cost-efficient method of defining the legal relationship between carriers and consumers.²⁰ The Commission's new rules will result in endless re-writing and renegotiation of existing contracts. Further, publicly-available tariff filings give carriers and customers easy access to reliable information about services and rates in the marketplace. Continued availability of this information via tariffs would allow customers to better evaluate contract-specific offerings.

D. Permissive Detariffing Provides No Incentive For Tacit Price Collusion.

Voluntary tariffing will not lead to price collusion among carriers.. The record provides no basis whatsoever for concluding that tacit price collusion could exist under a permissive detariffing scheme. Because some carriers may choose not to file tariffs for some or all of their services, a permissive detariffing regime would not produce a comprehensive, centrally-located collection of rate information. Also, a streamlined, filing regime, whereby carriers file tariffs on only one-day's notice, effectively prevents the sort of advance-notice price signaling needed for tacit collusion to operate.²¹ The Second Report's speculation that carriers who desired to employ tacit price collusion would utilize permissively-filed tariffs to send pricing signals is unsupported

¹⁹ See Id. at 7.

²⁰ See, e.g., Telco Petition at 4.

²¹ See Frontier Petition at 10.

and speculative. Carriers are unlikely to utilize such a highly visible source of pricing information for this purpose.²² Even if the Commission's speculation were correct, mandatory detariffing would not prevent carriers who are determined to engage in price signaling from doing so through other mechanisms (e.g., press releases or advertising). Therefore, mandatory detariffing cannot be justified by the putative need to address the problem of price signaling.

Further, as CompTel pointed out in its comments, the Commission's conclusion ignores its own precedent in weighing the threat of price collusion against the costs of mandatory detariffing.²³ Regarding the extent of competition in the long distance industry, the Commission reasoned in CC Docket No. 90-132, that numerous factors militate against tacit price collusion. These factors include: the intense rivalry among the largest carriers, the presence of hundreds of smaller competitors, the increasingly heterogeneous nature of long distance services, the amount of competitive alternatives available to customers, and the cost structure of the industry. The Commission concluded that "it is unlikely that there will be tacit collusion in the pricing of interstate business services"²⁴ and later affirmed that conclusion in its final order.²⁵ CompTel urges the Commission to apply that precedent to the instant situation, and to find that there is no reason not to permit carriers to file tariffs.

²² See TRA Petition at 11.

²³ See CompTel Comments at 12-13.

²⁴ Competition in the Interstate Interexchange Market, CC Docket No 90-132, Notice of Proposed Rulemaking, 5 FCC Rcd 2627, 2656 n. 148 (1990).

²⁵ Competition in the Interstate Interexchange Market, CC Docket No. 90-132, Report and Order, 6 FCC Rcd 5880 (1991).

E. As A Bare Minimum, The Commission Should Grant The Limited Relief Sought In AT&T's Petition

CompTel strongly supports the requests for reconsideration contained in AT&T's petition as the bare minimum necessary to address the most excessive burdens imposed upon carriers by the mandatory detariffing policy. Specifically, AT&T requests reconsideration to allow carriers to file tariffs applicable to casual calling and to the first 45 days of service provided to new customers.²⁶ Permitting carriers to file tariffs which apply to these limited circumstances would protect the carriers' legitimate business interests and allow carriers to meet customer expectations. The result will be that carriers will be able to initiate and provide service more quickly and without needless advance payments.²⁷

In addition, AT&T seeks reconsideration of the rules requiring a split tariffing system for "mixed" domestic and international services²⁸ whereby domestic services are detariffed and international services are tariffed. The split system will create significant customer confusion, additional paperwork and implementation delays, as well as unduly complicate carrier-to-customer negotiations.²⁹ Therefore, even if the Commission should choose to ignore reason and

²⁶ See AT&T Petition at 9-13. See also, Telco Petition at 1-4.

²⁷ See AT&T Petition at 9.

²⁸ See *Id.* at 13-17. See also American Petroleum Petition, requesting that international services be detariffed as well. While CompTel disagrees with the conclusion that these services should be subject to mandatory rather than permissive detariffing, American Petroleum's arguments present evidence in favor of consistent treatment for "mixed services."

²⁹ See *Id.* at 15.

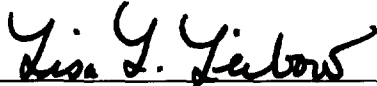
deny parties' requests for reconsideration of its mandatory detariffing scheme, the Commission should grant AT&T's limited requests for reconsideration.

III. CONCLUSION

For the foregoing reasons, CompTel submits that the Commission should grant the petitions for reconsideration challenging its mandatory detariffing policy.

Respectfully submitted,

Genevieve Morelli
Executive Vice President
and General Counsel
Competitive Telecommunications
Association
1900 M Street, N.W.
Suite 800
Washington, D.C. 20036
(202) 296-6650

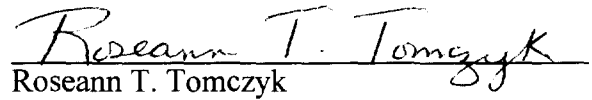
By: 
Robert J. Aamoth
Lisa L. Leibow
REED SMITH SHAW & MCCLAY
1301 K Street, N.W.
Suite 1100 - East Tower
Washington, D.C. 20005
(202) 414-9210

Counsel for Competitive
Telecommunications Association

January 28, 1997

CERTIFICATE OF SERVICE

I, Roseann T. Tomczyk, hereby certify that true and correct copies of the preceding comments on petitions for reconsideration of the Federal Communications Commission's Second Report and Order in CC Docket 96-61, were filed this 28th day of January, 1997, with the Secretary of the Federal Communications Commission and served by first-class mail, postage prepaid upon the parties on the attached service list.


Roseann T. Tomczyk

Ellen G. Block, Esq.
Ad Hoc Tlelcommunications Users
Committee, et al.
c/o Levine, Blaszak, Block & Boothby
1300 Connecticut Avenue, N.W.
Suite 500
Washington, D.C. 20036

C. Douglas Jarrett, Esq.
American Petroleum Institute
c/o Keller and Heckman LLP
1001 G Street, N.W.
Washington, D.C. 20001

Kathy L. Shobert, Esq.
Director, Federal Affairs
General Communication, Inc.
901 15th Street, N.W.
Suite 900
Washington, D.C. 20005-2503

Michael J. Shortley, III, Esq.
Attorney for Frontier Corporation
180 South Clinton Avenue
Rochester, NY 14646

Roy E. Hoffinger, Esq.
AT&T Corp.
295 North Maple Avenue
Room 3245I1
Basking Ridge, NJ 07920

Philip V. Permut, Esq.
Western Union Communications, Inc.
c/o Kelley Drye & Warren LLP
1200 19th Street, N.W.
Suite 500
Washington, D.C. 20036

Charles C. Hunter, Esq.
Telecommunications Resellers Association
c/o Hunter & Mow, P.C.
1620 I Street, N.W.
Suite 701
Washington, D.C. 20006

Pamela S. Arluk, Esq.
Telco Communications Group, Inc.
c/o Swidler & Berlin, Chtd.
3000 K Street, N.W.
Suite 300
Washington, D.C. 20007

Cheryl A. Tritt, Esq.
Telecommunications Management
Information Systems Coalition
c/o Morrison & Foerster LLP
2000 Pennsylvania Avenue, N.W.
Suite 5500
Washington, D.C. 20006

R. Edward Price, Esq.
The Rural Telephone Coalition
c/o Koteen & Naftalin, L.L.P.
1150 Connecticut Avenue, N.W.
Suite 1000
Washington, D.C. 20036

International Transcription Service*
1919 M Street, N.W.
Room 246
Washington, D.C. 20554

Reginald R. Bernard
President
SDN Users Association, Inc.
P. O. Box 4014
Bridgewater, NJ 08807